

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Ben Gilmore	Team: Squad #15	CCRB Case #: 201607965	<input type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Monday, 09/12/2016 6:30 PM	Location of Incident: 25th Precinct hub-site	Precinct: 25	18 Mo. SOL 3/12/2018	EO SOL 3/12/2018	
Date/Time CV Reported Mon, 09/12/2016 10:09 PM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Fri, 09/16/2016 11:22 AM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. LT Timothy Kearns	00000	906542	NARCBMN

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Rashied McIntyre	03405	947807	NARCBMN
2. DT3 Christophe Vanweddinger	07796	919808	NARCBMN
3. DT3 Taiwo Adeleke	3761	946662	NARCBMN
4. POM Lawrence Thomas	23859	947541	NARCBMN
5. DT3 Jeffrey Smith	1958	945018	NARCBMN
6. DT3 Keith Knight	02886	920469	NARCBMN
7. DT3 Louis Dambrosio	04008	932513	NARCBMN
8. UC CO313		000000	

Officer(s)	Allegation	Investigator Recommendation
A.LT Timothy Kearns	Abuse: Lieutenant Timothy Kearns authorized the strip-search of § 87(2)(b)	

Case Summary

On September 12, 2016, Lt. Timothy Kearns of Narcotics Borough Manhattan North called the IAB Command Center to report that force was used against a prisoner, § 87(2)(b) in the process of strip-searching him, and that § 87(2)(b) complained that the strip-search violated his rights (IAB Original Log #16-32444). IAB forwarded the case to the CCRB, where it was received on September 16, 2016.

On September 12, 2016, at approximately 5:35 p.m., § 87(2)(b) was arrested inside of a bodega at 282 Lenox Avenue in Manhattan and charged with § 87(2)(b).

§ 87(2)(b) (Board Review 01). § 87(2)(b) acknowledged purchasing and ingesting heroin at the bodega, but he denied ever selling a narcotic. § 87(2)(b) further denied having any narcotic on his person when he was apprehended.

§ 87(2)(b) was transported to the 25th Precinct hub-site. Allegedly, Lt. Kearns instructed PO Rashied McIntyre of Narcotics Borough Manhattan North to strip-search § 87(2)(b) and PO McIntyre conducted a strip-search of § 87(2)(b) (**Allegation A**).

There is no video footage of this incident.

This case surpassed the 90-day benchmark, because officers from Narcotics Borough Manhattan North missed a total of 15 scheduled interviews with the CCRB.

Mediation, Civil and Criminal Histories

- [illegible]

Civilian and Officer CCRB Histories

- This is the second CCRB complaint in which § 87(2)(b) is involved (Board Review 05). § 87(2)(b)
 - Lt. Kearns has been a member of service for 22 years, and he has been the subject of six previous CCRB allegations, only one of which was substantiated. § 87(2)(g)
- In CCRB 200004809, a discourteous word allegation was substantiated against Lt. Kearns. The CCRB recommended Command Discipline B, but the NYPD disposition remains unknown.

Findings and Recommendations

Allegation not pleaded

Although Lt. Kearns indicated to IAB that force was used against § 87(2)(b) when he was uncooperative during the alleged strip-search (Board Review 06), § 87(2)(b) did not allege that officers used force against him during his sworn statement. § 87(2)(g)

Allegation A – Abuse of Authority: Lieutenant Timothy Kearns authorized the strip-search of § 87(2)(b)

§ 87(2)(g)

§ 87(2)(b) was arrested for allegedly participating in a drug transaction with an undercover officer, “Undercover § 87(2)(b) at a bodega at 282 Lenox Avenue in Manhattan. § 87(2)(b) (Board Review 07) testified that he purchased heroin from a male individual and ingested it, but that he never sold narcotics, nor did he have any contraband on his person when he was arrested. § 87(2)(b) was transported to the 25th Precinct hub-site.

It is undisputed that Lt. Kearns authorized a strip-search of § 87(2)(b) at the hub-site, and that PO McIntyre conducted the strip-search of § 87(2)(b).

Lt. Kearns (Board Review 08) testified that § 87(2)(b) was strip-searched immediately upon his arrival at the 25th Precinct hub-site, that he did not know anything about § 87(2)(b)'s criminal conviction history, nor did he know what, if anything, had been recovered from § 87(2)(b) prior to authorizing the strip-search. Lt. Kearns testified that he authorized the strip-search of § 87(2)(b) solely for two reasons: (1) § 87(2)(b) was arrested for selling narcotics, and (2) someone from the Narcotics Borough Manhattan North Field Team—he did not recall who—told him that § 87(2)(b) was reaching his hand deep inside the groin area of his pants while he participated in a drug transaction with Undercover § 87(2)(f).

Undercover § 87(2)(f) (Board Review 09) testified that § 87(2)(b) stood with another individual who gave § 87(2)(f) two glassines of heroin, that he observed § 87(2)(b) with two separate glassines of heroin in his hand, but that § 87(2)(b) never reached his hand inside his pants while he interacted with him. Undercover § 87(2)(f) testified that he did not see what, if anything, § 87(2)(b) did with the two glassines of heroin which were in his hand. Undercover § 87(2)(f) testified that if § 87(2)(b) had reached his hand inside his pants, he probably would have included this in his UC Buy Report. The UC Buy Report (Board Review 10), which § 87(2)(f) completed the same day as the incident, does not mention § 87(2)(b) reaching inside his pants.

Of the five other Narcotics Borough Manhattan North Field Team officers interviewed who acknowledged being at the scene of § 87(2)(b)'s arrest —PO Rashied McIntyre (Board Review 11), Det. Christopher Vanweddinger (Board Review 12), Det. Jeffrey Smith (Board Review 13), Det. Keith Knight (Board Review 14), and Det. Louis Dambrosio (Board Review 15)—none of them indicated that they saw § 87(2)(b) reach inside his pants, nor did they indicate that they said this to Lt. Kearns.

None of the following records note § 87(2)(b) reaching inside his pants at any point during the incident: § 87(2)(b)'s arrest report, the T.R.I. report (Board Review 16), the memo book of any officer interviewed (Board Review 17), the Criminal Court Complaint Report and supporting deposition (Board Review 18), and the Command Log (Board Review 19).

§ 87(2)(g)

§ 87(2)(g)

Det. Vanweddinger testified that he observed § 87(2)(b) reaching into the rear of his pants while rear-cuffed inside the hub-site, and that he most likely told this to Lt. Kearns, but he did not specifically remember telling Lt. Kearns. No other officer interviewed testified that they saw § 87(2)(b) reaching inside his pants, including PO McIntyre, who testified that he escorted § 87(2)(b) inside the hub-site and that § 87(2)(b) was standing still before being taken to be strip-searched.

The Command Log notes that § 87(2)(b) was strip-searched for “220.39,” which is ‘Criminal Sale of a Controlled Substance in the third degree’ under the New York State Penal Code. It does not provide any other justification for the strip-search.

An officer may strip-search an individual when there is reasonable suspicion that the arrestee is concealing contraband. People v. Hall, 10 N.Y.3d 303 (2008) (Board Review 20).

§ 87(2)(g)

§ 87(2)(g)

§ 87(2)(g)

Squad:

Investigator: _____
Signature Print Date

Squad Leader: _____
Title/Signature Print Date

Reviewer: _____
Title/Signature Print Date